

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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WILLIAM F. LEACH and OTIS T. BUCHAN,

Plaintiffs/Counter-Defendants-  
Appellants,

v

R.P. JOHNSON, KEN PESHL, a/k/a KEN PESHI,  
C.J. PUTNEY, FRANK SCHULTZ and STEVE  
WOLIN,

Defendants/Counter-Plaintiffs-  
Appellees.

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UNPUBLISHED

July 19, 2007

No. 272669

Macomb Circuit Court

LC No. 05-002379-CZ

Before: Smolenski, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Plaintiffs appeal by leave granted the trial court's order granting defendants' motion for summary disposition. Plaintiffs argue that (1) the trial court erred in ruling in defendants' favor on the ultimate issue of the right to control and possess the disputed church property, because defendants lack authority to speak on behalf of The Gospel Lighthouse church (Gospel Lighthouse); (2) under the ecclesiastical abstention doctrine, secular courts are without subject-matter jurisdiction to review the decision of the Michigan district of the Assemblies of God to reclassify Gospel Lighthouse as a district supervised church; (3) the actions of defendants, in amending Gospel Lighthouse's constitution, bylaws and articles of incorporation, are null and void because they are prohibited by the Gospel Lighthouse's constitution; (4) the actions of defendants, amending the constitution, bylaws and articles of incorporation of Gospel Lighthouse, are null and void because they violate the general corporation act as it relates to ecclesiastical corporations. Because we hold that the trial court failed to decide a fact-oriented issue necessary for the resolution of the ecclesiastical abstention issue, we reverse and remand.

I

A

This case involves a dispute over ownership and control of real property, a church, known as Gospel Lighthouse, located at 10410 Toepfer in Warren, Michigan. The Gospel Lighthouse congregation was affiliated with the Assemblies of God, but eventually its members (or, at least, a majority of them) decided to secede from the Assemblies of God.

Plaintiff William F. Leach is the district superintendent of the Michigan district of the Assemblies of God. Plaintiff Otis T. Buchan is the district supervised director and president of the Gospel Lighthouse Assembly of God. Defendant R.P. Johnson is pastor of the Gospel Lighthouse congregation. Defendants Ken Peshi, C.J. Putney, Frank Schultz and Steve Wolin are elders of the Gospel Lighthouse congregation.

## B

In 1968, the Gospel Lighthouse Assembly of God signed an affiliation agreement with the Michigan District Council of the Assemblies of God (hereinafter, "the district council") and became a dependent assembly of the district council. On January 20, 1984, Gospel Lighthouse filed articles of incorporation and adopted a constitution and bylaws. The 1984 constitution provided in article II, section 2:

[Gospel Lighthouse] shall have the right to purchase or acquire by gift, bequest, or otherwise, either directly or as trustee, and to own, hold in trust, use, sell, convey, mortgage, lease, or otherwise dispose of any real estate or chattels as may be necessary for the furtherance of its purposes; all in accordance with its Constitution and Bylaws or as the same may be hereafter amended.

In article XII, the 1984 Gospel Lighthouse constitution provided:

Section 1. All property of the assembly shall be deeded to Gospel Lighthouse and held in its corporate name. . . .

Section 2. *In the event defection shall occur from the tenets of faith . . . resulting in a bre[a]ch with the Assemblies of God, Michigan District, and the same procedure has been followed as stated within Article III, 6. a,b, [sic] and c, any portion of the membership subscribing to and practicing the aforesaid tenets of faith and the Constitution and Bylaws of Gospel Lighthouse and retaining membership with the Gospel Lighthouse, shall retain possession of, and title to, all properties of said church with full rights thereto as provided in its Constitution and Bylaws.*

Section 3. In the event this church shall cease to function for the purposes as declared heretofore in the Articles of its Constitution, then, after providing for the payment of its debts, the remaining assets . . . shall revert to, and be transferred to, the Michigan District of the Assemblies of God. . . .

Section 4. In the event of cessation of this church, the Elected Deacons along with the Pastor, shall . . . transfer all properties and any remaining assets to the Michigan District of the Assemblies of God in accordance with the foregoing provisions. [Emphases added.]

Also on January 20, 1984, Gospel Lighthouse entered into a land contract with Toepfer Drive Baptist Church to purchase the church property at issue. On December 31, 1986, the district council approved Gospel Lighthouse's constitution and bylaws.

In 1988, Gospel Lighthouse asked the district council to upgrade its status from district supervised to autonomous. According to the bylaws of the Michigan district of the Assemblies of God, local churches can apply for greater degrees of autonomy, until they are considered an autonomous local church, which is “a local church that has matured sufficiently to accept its full share of responsibility for the maintenance of scriptural order . . . .” The district council denied Gospel Lighthouse’s request, but did upgrade its status from district supervised to district advanced. In 1992, the General Council of the Assemblies of God recognized Gospel Lighthouse as a local assembly “duly affiliated in the cooperative fellowship of THE GENERAL COUNCIL OF THE ASSEMBLIES OF GOD.”

On September 13, 2004, Leach notified the executive presbyters that “a crisis has arisen at Gospel Lighthouse,” and that he had informed Johnson that until the crisis abated, Gospel Lighthouse was reclassified as a district supervised church. A majority of the executive presbyters voted to ratify Leach’s decision to reclassify Gospel Lighthouse to a district supervised church.

On October 22, 2004, Leach wrote to Johnson and Putney to inform them that he had learned that Johnson had scheduled a meeting to “remove all references in your Constitution and Bylaws to the Assemblies of God, Michigan District and the General Council of the Assemblies of God.” Leach wrote that the meeting and proposed action were illegal, as the church had been declassified as a district supervised church pursuant to the district council’s bylaws. Leach further stated, “The Assemblies of God is a hierarchical organization. The Constitution and Bylaws of a local church are subject to the Constitution and Bylaws of the District and General Council.” Leach also stated that the district would take any necessary steps to protect the Gospel Lighthouse property for the Assemblies of God. He referred to the Rules of Order for District Supervised Assemblies, article VII, § 4, which provides:

*Notwithstanding language to the contrary in these Rules of Order, if the Presbyter Board determines, in its sole and unrestricted discretion, that a church has ceased to be a viable church, or no longer adheres to Assemblies of God doctrine and practices, then the Presbyter Board shall have the option to take possession of and full title to all real, personal, intellectual, tangible and intangible, or other property of whatever kind of the church on behalf of the Assemblies of God, Michigan District, an ecclesiastical corporation organized under the laws of the State of Michigan . . . . The Assemblies of God, Michigan District, shall forthwith have full authority to use or dispose of the property at the discretion of the Presbyter Board. . . . [Emphases added.]*

On October 25, 2004, Gospel Lighthouse filed restated articles of incorporation with the Michigan Department of Consumer and Industry Services, and adopted a restated constitution and bylaws. The 2004 constitution and bylaws eliminated all references to the Assemblies of God. The next day, the General Council of the Assemblies of God notified Gospel Lighthouse that, on the recommendation from the Michigan District Council, it had downgraded Gospel Lighthouse to a district council affiliated church. This action brought Gospel Lighthouse under the supervision of the district council.

On June 14, 2005, plaintiffs filed this action against defendants “in their capacities as individuals who claim authority to speak on behalf of Gospel Lighthouse Assembly of God.” Plaintiffs alleged that Gospel Lighthouse defected from the church’s tenets of faith by altering its constitution and bylaws, and therefore, Gospel Lighthouse was required to transfer all property to the district council. Plaintiffs asserted that defendants were committing continuing trespass by remaining in control and possession of Gospel Lighthouse’s assets and records. Plaintiffs sought a declaration that they acted within their powers on behalf of the denomination, and that defendants’ amendment of the constitution and bylaws was null and void. Plaintiffs also asked the trial court to enjoin defendants from selling or encumbering the property.

Defendants denied plaintiff’s allegations, asserted affirmative defenses, and counterclaimed, alleging that plaintiffs had attempted to usurp Gospel Lighthouse’s authority, and that defendants embarked on a scheme to disparage and defame Gospel Lighthouse’s elders. Defendants asserted counterclaims of defamation, intentional infliction of emotional distress, and tortious interference with contractual relations.

Plaintiffs filed a motion for summary disposition under MCR 2.116(C)(4), (8) and (10). The portion of the motion under subrule (C)(4) was premised on a lack of subject-matter jurisdiction under the ecclesiastical abstention doctrine (explained below). Plaintiffs argued that the district council had the power to downgrade Gospel Lighthouse to a district supervised church because the Assemblies of God is a hierarchical ecclesiastical organization. Plaintiffs argued that under the first<sup>1</sup> and 14<sup>th</sup> amendments<sup>2</sup> to the United States Constitution, and under article I, section 4 of the Michigan Constitution,<sup>3</sup> the district council’s action was not reviewable by secular courts. Plaintiffs further argued that the 1984 constitution and bylaws prohibit disaffiliation, and that defendants’ amendments of Gospel Lighthouse’s constitution and bylaws were null and void.

Defendants filed a response and countermotion for summary disposition. Defendants did not specify which subrule of MCR 2.116(C) their countermotion relied upon. Defendants contended that plaintiffs had improperly initiated the lawsuit. Defendants argued that the

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<sup>1</sup> The first amendment to the United States Constitution provides, in relevant part: “Congress shall make no law respecting an establishment of religion, *or prohibiting the free exercise thereof . . .*” (Emphasis added.)

<sup>2</sup> The 14<sup>th</sup> amendment to the United States Constitution provides, in relevant part: “nor shall any State deprive any person of life, liberty, or property, without due process of law . . . .”

<sup>3</sup> Article 1, section 4 of the Michigan Constitution provides, in relevant part: “Every person shall be at liberty to worship God according to the dictates of his own conscience . . . .”

applicable corporate documents created an express trust in favor of Gospel Lighthouse over its property and affairs. To support this assertion, defendants cited provisions in the Gospel Lighthouse bylaws that provide that all property rights are vested in Gospel Lighthouse as an ecclesiastical corporation. Defendants disputed plaintiffs' assertion that the Assemblies of God was a hierarchical organization, and argued that the trial court should apply a "neutral principles of law" approach to determine who would own the property.

The trial court agreed with defendants' argument that there was an express trust created by the corporate documents. The trial court therefore denied plaintiffs' motion, granted defendants' motion, and dismissed plaintiffs' claims. The trial court's order did not resolve the counterclaims. We granted leave to appeal. *Leach v Johnson*, unpublished order of the Court of Appeals, entered October 10, 2006 (Docket No. 272669).

## II

### A

Plaintiffs first argue that the trial court erred in ruling in defendants' favor on the ultimate issue of the right to control and possess the disputed property, because defendants lack authority to represent Gospel Lighthouse. Plaintiffs did not raise this issue in their application for leave to appeal. Our order granting leave was limited to the issues raised in the application. Accordingly, we decline to consider this issue. See MCR 7.205(D)(4); *O'Connor v Comm'r of Ins*, 236 Mich App 665, 673; 601 NW2d 168 (1999), rev'd on other grounds 463 Mich 864 (2000).

### B

Plaintiffs next argue that under the ecclesiastical abstention doctrine, secular courts are without authority to review the decision of the Michigan district of the Assemblies of God to reclassify Gospel Lighthouse as a district supervised church. Plaintiffs argue that "this Court has no alternative but to declare that the actions of Defendants in amending the Gospel Lighthouse Constitution, Bylaws and Articles of Incorporation as null and void due to the fact that, at the time they did so, the Gospel Lighthouse was a District Supervised Church and wholly under the direction of the Michigan District."

## 1

A summary disposition motion pursuant to MCR 2.116(C)(4) tests the circuit court's subject-matter jurisdiction, i.e., whether it had judicial power over the case. See *Ryan v Ryan*, 260 Mich App 315, 331, 677 NW2d 899 (2004), citing *Altman v Nelson*, 197 Mich App 467, 472, 495 NW2d 826 (1992). Whether a court has subject matter jurisdiction is a question of law that we review de novo. *Citizens for Common Sense in Gov't v Attorney Gen*, 243 Mich App 43, 49-50; 620 NW2d 546 (2000).

Normally, when reviewing a motion to dismiss for lack of subject-matter jurisdiction, we must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law. *Cork v Applebee's of Michigan, Inc*, 239 Mich App 311, 315; 608 NW2d 62 (2000). Here, however, we have the unusual situation in which the *plaintiff* argues that the trial

court was without subject matter jurisdiction, albeit plaintiffs argue that secular courts lack jurisdiction over a particular issue only.

2

“Jurisdiction of the subject matter is the right of the court to exercise judicial power over a class of cases, not the particular case before it; to exercise the abstract power to try a case of the kind or character of the one pending. The question of jurisdiction does not depend on the truth or falsity of the charges but upon its nature; it is determinable on the commencement, not at the conclusion, of the inquiry. Jurisdiction always depends on the allegations and never upon the facts.” [Ryan, *supra* at 331; 677 NW2d 899 (2004), citing Altman, *supra* at 472 (citations omitted).]

The subject-matter jurisdiction of a court arises by law, not by the consent of the parties. *Bowie v Arder*, 441 Mich 23, 56; 490 NW2d 568 (1992).

“When a court lacks subject matter jurisdiction . . . any action it takes, other than to dismiss the action, is void.” *Bowie, supra* at 56 (citation omitted). “Further, a court must take notice of the limits of its authority, and should on its own motion recognize its lack of jurisdiction and dismiss the action at any stage in the proceedings.” *Id.* (citation omitted). A challenge to a court’s subject-matter jurisdiction may be raised at any time, including for the first time on appeal. *Polkton Charter Twp v Pellegrum*, 265 Mich App 88, 97-98; 693 NW2d 170 (2005).

The Michigan and United States Constitutions guarantee religious freedom by forbidding governmental establishment of religion or governmental interference in the exercise of religion. Const. 1963, art 1, § 4; US Const, Am I, Am XIV. This right to freedom of religion spawns the ecclesiastical abstention doctrine, which provides that a secular court loses subject-matter jurisdiction when it must venture into questions of religious doctrine or ecclesiastical polity. *Smith v Calvary Christian Church*, 462 Mich 679, 684; 614 NW2d 590 (2000). “Religious doctrine refers to ritual, liturgy of worship, and tenets of the faith. Polity refers to [the] organization and form of government of the church.” *Maciejewski v Breitenbeck*, 162 Mich App 410, 414; 413 NW2d 65 (1987). A secular court’s jurisdiction to resolve property disputes involving a church or church members is limited to property rights that can be adjudicated by application of civil law. *Id.* Further, the ecclesiastical abstention doctrine bars a secular court from determining whether a church violated its own policies and procedures. See *Dlaikan v Roodbeen*, 206 Mich App 591, 594; 522 NW2d 719 (1994).

The basis for the ecclesiastical abstention doctrine is the religious freedom of the religious entity involved: “[I]t . . . would lead to the total subversion of . . . religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed.” *Watson v Jones*, 13 Wall 679, 729, 20 L Ed. 666, 676-77 (1872). If resolution of an ecclesiastical dispute requires extensive inquiry by secular courts into religious law and polity, “the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity, but must accept such decisions as binding on them, in their application to the religious issues of doctrine or polity

before them.” *Serbian Eastern Orthodox Diocese v Milivojevich*, 426 US 696, 709, 96 S Ct 2372, 2380, 49 L Ed 2d 151, 162 (1976). As acknowledged by the trial court, this “theory of hierarchy” represents the preferred approach in Michigan. *Bennison v Sharp*, 121 Mich App 705, 721-724; 329 NW2d 466 (1982)

But where resolution of a dispute requires no consideration of religious doctrine, neutral principles of secular law may be applied, permitting a secular court to interpret provisions of religious documents involving property rights and other nondoctrinal matters, to the extent that the analysis can be done in purely secular terms. See *RW Jones v Wolf*, 443 US 595, 99 S Ct 3020, 61 L Ed 2d 775 (1979). This last approach is known as the “neutral principles of law” approach.

Secular courts have general authority to settle church property disputes. *Bennison*, *supra* at 712. But that role is severely limited. *Id.* at 712-713. Secular courts may not resolve property disputes on the “basis of religious doctrine and practice,” and must defer to “the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization.” *Id.* at 713 (emphasis added).

In *Bennison*, we followed the hierarchical approach to resolve church property disputes, and ruled that when a local congregation within a hierarchical church secedes, the local congregation does not have the right to possess or control church property. *Bennison*, *supra* at 724. We recognized an exception to this rule: if an express trust exists, secular courts must apply the neutral principles of law theory. *Id.* In order to determine whether a local congregation is part of a hierarchical organization, trial courts must examine the relationship between the local church and the denomination, and decide whether the local church is independent, or whether the “religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete, in some supreme judicatory over the whole membership of that general organization.” *Watson*, *supra* at 722; see *Bennison*, *supra* at 720.

Here, the trial court did not address whether the Assemblies of God form a hierarchical organization, a fact-oriented question concerning the structure of the Assemblies of God and its relationship with its affiliated churches that must be answered in order to adjudicate the property dispute. The trial court is more familiar with the facts in this matter than we. Accordingly, we conclude that a remand is necessary to allow the trial court to determine whether the Assemblies of God organization is hierarchical. The resolution of this issue will allow the trial court to rule on the question of the ecclesiastical abstention doctrine (i.e., the question whether secular courts have subject-matter jurisdiction here).

3

Within the ecclesiastical abstention doctrine issue is the question of whether an express trust existed. *Bennison*, *supra* at 724. The trial court held that an express trust did exist in defendants’ favor. We hold that the trial court erred as a matter of law in so holding.

To create an express trust, there must be an assignment of designated property to a trustee with the intention of passing title to the trustee for the benefit of others. *Goodenough v Union*

*Guardian Trust Co*, 275 Mich 698, 703; 267 NW 772 (1936). ““To constitute an express trust there must be an explicit declaration of trust, or circumstances which show beyond reasonable doubt that a trust was intended to be created.”” *Scarney v Clarke*, 282 Mich 56, 63; 275 NW 765 (1937), quoting 65 CJ, p 231. Further, an express trust in real property must be in writing; trusts in real estate may not be established by parol evidence. See *Howe v Webert*, 332 Mich 84, 93-94; 50 NW2d 725 (1952).

The trial court found that Article XII, § 2 of the Gospel Lighthouse bylaws created an express trust in defendants’ favor. There is no Article XII, § 2 in the bylaws; however, Article XII, § 2 of the Gospel Lighthouse constitution provides:

In the event defection shall occur from the tenets of faith as stated within the Statement Of [sic] Fundamental Truths found in Article V. of the Constitution and Bylaws Of [sic] The Assemblies of God[,] Michigan District, resulting in a breech [sic] with the Assemblies of God, Michigan District, and the same procedure has been followed as stated within Article III, 6. a,b[sic] and c, any portion of the membership subscribing to and practicing the aforesaid tents of faith and Constitution and Bylaws of Gospel Lighthouse and retaining membership with Gospel Lighthouse, shall retain possession of, and title to, all properties of said church with full rights thereto as provided in its Constitution and Bylaws.

This section of the constitution does not create an express trust. There is no mention of an assignment of the property to a trustee, nor is there evidence of a donor’s intent for the property’s title to pass to a trustee to hold for the benefit of the members of the church. See *Goodenough*, *supra* at 703. Moreover, there appear to be no other documents in the lower court record creating an express trust in the property. On the record before us, the trial court erred as a matter of law and reversal is warranted.

## C

Plaintiffs next argue that the actions of defendants, in amending the constitution, bylaws and articles of incorporation of Gospel Lighthouse (eliminating all references to the Assemblies of God), are null and void, because they are prohibited by Gospel Lighthouse’s own constitution. The trial court did not rule on this issue. Thus, it is not properly preserved for review. *Polkton*, *supra* at 95. In addition, under the ecclesiastical abstention doctrine, secular courts lack subject-matter jurisdiction to determine whether a church violated its own policies and procedures. See *Dlaikan*, *supra* at 594.

## D

Finally, plaintiffs argue that the actions of defendants, in amending the constitution, bylaws and articles of incorporation of Gospel Lighthouse (eliminating all references to the Assemblies of God), are null and void, because they violate the general corporation act as it relates to ecclesiastical corporations. Plaintiffs cite MCL 450.182, which provides:

The articles of any such ecclesiastical corporation may be amended at any meeting of the members of such corporation called for that purpose pursuant to



the bylaws, by the affirmative vote of a majority of the members entitled to vote thereon present at such meeting, unless a different majority is required by the rules of discipline or by the church policy in any particular case . . . . *Where the system of discipline or polity in any particular denomination or church requires the action, consent or vote of a conference, conclave or synod, presbytery or other body, or the approval of certain officers of such conference or other body or of a bishop or other hierarchical officer, to such amendments, then all such amendments shall be made in conformity to such practice and requirements and shall in all other respects conform to the customs, usages, beliefs and discipline of the particular church body concerned.* [Emphasis added.]

Plaintiffs, relying on the highlighted sentence, argue that, at the time defendants' actions of amending the corporate documents were taken, Gospel Lighthouse was a district supervised church, and that the rules of order for district supervised assemblies provided that "Any action taken by the officers or by the church shall be subject to review and approval by the District Supervised Church Director . . . ." Plaintiffs imply, but do not argue, that the amendments to the corporate documents were not approved by the district supervised church director.

The trial court did not address this issue of the validity of defendants' actions under MCL 450.182. Therefore, there is nothing for us to review, *McCarthy v Wayne Co Circuit Judge*, 294 Mich 368, 373; 293 NW 683 (1940) ("judgment in the circuit court having been satisfied, there is nothing before us for review"), and the issue is unpreserved, *Polkton Charter Twp, supra* at 95. Although it appears to be a question of law, we decline to review it, because (1) the facts necessary for its resolution are not presented, and (2) it would require us to determine whether a church violated its own policies and procedures, which we lack subject-matter jurisdiction to do. See *Dlaikan, supra* at 594.

### III

Resolution of the ecclesiastical abstention doctrine issue (the subject-matter jurisdiction issue) requires a determination of whether defendants' church organization is hierarchical. The trial court is better able to make that determination in the first instance. But the trial court did err as a matter of law in holding that an express trust was created.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael R. Smolenski  
/s/ Kurtis T. Wilder  
/s/ Brian K. Zahra